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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke
12 Probation Against,

Case No. 2003-243

13 **PHILIP JACK NYMAN**

PETITION TO REVOKE PROBATION

14 6 Mistletoe Street
15 Rancho Santa Margarita, CA 92688

16 Registered Nurse License No. 469962

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Petition to Revoke Probation
22 solely in her official capacity as the Interim Executive Officer of the Board of Registered
23 Nursing, Department of Consumer Affairs.

24 2. On or about August 31, 1991, the Board of Registered Nursing issued Registered
25 Nurse License Number 469962 to Philip Jack Nyman (Respondent). The Registered Nurse
26 License was in effect at all times relevant to the charges brought herein and will expire on
27 February 28, 2011, unless renewed.

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1 3. In a disciplinary action entitled "In the Matter of the Accusation Against Philip Jack
2 Nymman," Case No. 2003-243, the Board of Registered Nursing, issued a decision, effective April
3 19, 2006, in which Respondent's Registered Nurse License was revoked. However, the
4 revocation was stayed and Respondent's Registered Nurse License was placed on probation for a
5 period of three (3) years with certain terms and conditions. A copy of that decision is attached as
6 Exhibit A and is incorporated by reference.

7 4. On March 25, 2009 the Board extended the term of the probation for one year, until
8 April 18, 2010, to allow Respondent to obtain employment as a registered nurse.

9 **JURISDICTION**

10 5. This Petition to Revoke Probation is brought before the Board of Registered Nursing
11 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
12 references are to the Business and Professions Code unless otherwise indicated.

13 6. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
14 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
15 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
16 Nursing Practice Act.

17 7. Section 2764 of the Code states:

18 "The lapsing or suspension of a license by operation of law or by order or decision of the
19 board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the
20 board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding
21 against such license, or to render a decision suspending or revoking such license."

22 8. Condition #12 of Respondent's probation states:

23 If a Respondent violates the conditions of his probation, the Board after
24 giving the Respondent notice and an opportunity to be heard, may set aside the
25 stay order and impose the stayed discipline (revocation) of Respondent's license.

26 If during the period of probation, an Accusation or Petition to Revoke
27 Probation has been filed against Respondent's license or the Attorney General's
28 office has been requested to prepare an Accusation or Petition to Revoke Probation
against the respondent's license, the probationary period shall automatically be

1 extended and shall not expire until the Accusation or Petition has been acted upon
2 by the Board.

3 9. Grounds exist to revoke Respondent's probation and reimpose the order of revocation
4 of his Registered Nurse license in that he has violated the conditions of his probation as follows.

5 **FIRST CAUSE TO REVOKE PROBATION**

6 **(Failed to Comply with the Board's Probation Program)**

7 10. Condition #2 of Respondent's probation provides, in pertinent part, that Respondent
8 shall fully comply with the conditions of the Probation Program established by the Board and
9 cooperates with representatives of the Board in its monitoring and investigation of Respondent's
10 compliance with the Board's Probation Program.

11 11. Respondent's probation is subject to revocation in that he failed to maintain an active
12 current license status with the Board at all times during his probation, in that his license expired
13 on February 28, 2007 and was not renewed until March 3, 2009.

14 12. In addition, Respondent's probation is subject to revocation in that he failed to fully
15 comply with the conditions of the Probation Program, as is more particularly set forth below.

16 **SECOND CAUSE TO REVOKE PROBATION**

17 **(Failed to Submit Written Quarterly Reports)**

18 13. Condition #5 of Respondent's probation provides, in pertinent part, that Respondent
19 shall cause to be submitted to the Board written reports and declarations and verifications relative
20 to Respondent's compliance with the conditions of the Board's Probation Program.

21 14. Respondent's probation is subject to revocation because he failed to comply with
22 Probation Condition #5, referenced above. Respondent was required to submit quarterly reports
23 to the Board. Respondent failed to submit his quarterly reports as follows:

24 2007 3rd quarter Quarterly Report was not submitted by the due date of October 7, 2007,
25 2007 4th quarter Quarterly Report was not submitted by the due date of January 7, 2008,
26 2008 1st quarter Quarterly Report was not submitted by the due date of April 7, 2008,
27 2008 2nd quarter Quarterly Report was not submitted by the due date of July 7, 2008,
28 2009 2nd quarter Quarterly Report was not submitted by the due date of July 7, 2009,
2009 3rd quarter Quarterly Report was not submitted by the due date of October 7, 2009.

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Exhibit A

Decision and Order

Board of Registered Nursing Case No. 2003-243

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PHILLIP JACK NYMAN, RN
6 Mistletoe Street
Rancho Santa Margarita, CA 92688

Registered Nurse License No. 469962

Respondent.

Case No. 2003-243

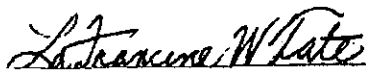
OAH No. L2003060167

DECISION AFTER SECOND REMAND FROM SUPERIOR COURT

The attached Decision After Second Remand From Superior Court is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on April 19, 2006.

IT IS SO ORDERED this 19th day of April, 2006.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PHILLIP JACK NYMAN, RN
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Rancho Santa Margarita, CA 92688

Registered Nurse License No. 469962

Respondent.

Case No. 2003-243

OAH No. L2003060167

DECISION AFTER SECOND REMAND FROM SUPERIOR COURT

On October 14, 2003, in Santa Ana, California, Denny R. Davis, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter. Susan Fitzgerald, Deputy Attorney General, Department of Justice, represented the complainant. Alex J. Llorente, Attorney at Law, represented respondent. Evidence was received, the record was closed and the matter was submitted on October 14, 2003. On November 13, 2003, the Administrative Law Judge issued his proposed decision and on February 6, 2004, the Board of Registered Nursing ("Board") adopted the proposed decision. On April 2, 2004 Respondent filed a Request for Reconsideration and on April 16, 2004 the Request for Reconsideration was denied and the decision became effective the same day. On August 3, 2004 Respondent filed a Petition for Writ of Mandate, which was granted by the Superior Court on February 8, 2005.

In its February 2005 decision, the Superior Court ruled that the Board had "erroneously adopted a proposed decision from the administrative law judge which expressed that certain findings were established by the wrong standard of proof. (Board decision, paragraph 11 p.3)." In the proposed decision, the administrative law judge found that "facts and circumstances show that the preponderance of the evidence supports the conclusion that respondent intentionally and with force slapped his patient in violation of his patient's rights and in violation of respondent's professional standards of conduct. (underline added) The Superior Court ruled that the correct standard of proof is clear and convincing evidence and pursuant to stipulation set aside the Board's decision which resulted in Respondent's license

becoming active and unimpeded by discipline "until such time, if at all, that the Board of Registered Nursing issues a further decision."

At its February 17, 2005 meeting, the Board was briefed as to the Superior Court decision requiring the board to determine whether the incident mentioned was proved by clear and convincing evidence. At that time, the Board was given the complete record of the administrative hearing. At its April 14, 2005 meeting, the board met in closed session to discuss its decision. After considering the entire record, including the transcript of the hearing and exhibits, the Board pursuant to the order of the Superior Court rendered a new decision and order on May 25, 2005. On June 23, 2005, respondent filed a Petition for Reconsideration. The Board granted a stay of its decision issued on May 25, 2005. The Board subsequently denied the Petition for Reconsideration and the respondent's license was revoked as of July 5, 2005.

On August 4, 2005, respondent filed a Second Writ of Mandamus. On February 23, 2006, the Orange County Superior Court granted the Second Petition for Writ of Mandamus. The Court upheld the findings contained in the Board's decision, however, it also held that the totality of the circumstances in this case did not warrant an outright revocation of respondent's license and directed the Board to reconsider the penalty. After considering the Court's ruling, the Board hereby issues the following decision:

FACTUAL FINDINGS

1. Complainant, Ruth Ann Terry, M.P.H., R.N., filed the accusation against respondent in her official capacity only and not otherwise, as Executive Officer, Board of Registered Nursing, Department of Consumer Affairs.
2. On August 31, 1991, the Board of Registered Nursing issued Registered Nurse License Number 469962 to Philip Jack Nyman ("respondent"). Respondent's license was in full force and effect at all times relevant herein. His license is scheduled to expire on February 28, 2005, unless renewed, revoked or otherwise disciplined.
3. Complainant's accusation alleges that on March 23, 2002, while on duty as a registered nurse and while performing duties in the Emergency Department of Hoag Memorial Hospital in Newport Beach, California, respondent engaged in unprofessional conduct. Specifically, complainant's accusation alleges that respondent slapped a patient.
4. On March 23, 2002, an intoxicated male patient was being attended by an Emergency Care Technician (ECT). The ECT was assisting the patient in the excretory function of urinating. The patient was in a 3/4-point-restraint because of his extreme acting out, both physically and verbally. The outbursts became a disruption within the emergency facility. Respondent talked with the patient in an attempt to calm him and to cajole him into silence, but without success. Respondent left the patient and sought out the Change-Nurse to obtain assistance. The Change-Nurse was not available. The patient continued with loud outbursts. Respondent returned to the ECT and the patient, and touched the patient on the

face, his left cheek. The complainant alleges respondent "slapped" the patient. Respondent contends that he only "flicked" the patient and that no harm to the patient was intended or caused and that he just wanted to control the situation in the ER.

5. The ECT witnessed the touching. This technician's work history included working for Hoag Hospital since 1997 and he worked in the Emergency Room (ER) for one year prior to the touching incident. Because of the ECT's training and because of Hoag Hospital policy, the ECT reported the incident to Hospital Director.

6. The ECT testified that the patient did not react in any way to the touching. The ECT reported that respondent slapped the patient with his open hand from the middle of his palm to the ends of his fingers with the inside of his right hand. He further testified that the touching caused redness to appear on the face of the patient. The technician also testified that respondent appeared to be angry when he slapped the patient.

7. Respondent testified that he "flicked" the patient on the cheek. He explained that the flick was with the back of his hand, without force, in a glancing or stroking motion and that no redness resulted from his touching the patient. Respondent's testimony was not credible. Based on the circumstances surrounding the incident, (as reported by respondent, the hospital was short staffed and conditions were chaotic) coupled with the report and testimony of the ECT witness, the Director and the investigator, respondent's testimony that he merely "flicked" the patient is not credible. After the lapse of approximately two hours from the time of the incident, respondent approached the ECT, while still on duty, and in private, he apologized to the ECT for having slapped the patient. If his touching of the patient was only a back-hand flicking, respondent would not feel it necessary to apologize to the ECT.

8. In response to the report presented to her by the ECT about the slapping incident, the Hospital Director interviewed respondent approximately three weeks after the incident. In response to her question: "Did you slap the patient?", respondent answered "Yes." Thereupon respondent was advised that his conduct was unacceptable, that it would cause the termination of his employment and that it would be reported to the Nursing Board.

9. The Director consulted with the Human Resources Department. Respondent's employment history included numerous recognitions and high praise. It was confirmed by the hospital's Human Resources Department that respondent's offense was grounds for an automatic termination. Even had respondent been a "Star" employee, the hospital policy required termination regardless of respondent's past employment record.

10. When being interviewed by an investigator from the Department, respondent admitted slapping the patient. He reported that he slapped the patient for "good-reason"; respondent reported that the patient was using abusive language. He insisted however, that it was a non-issue, because the patient did not know that he had been slapped. A second time respondent told the investigator that it was his view that although it is inappropriate to slap a patient, there was no issue to be concerned about because the patient did not know he had been

slapped. Notwithstanding respondent's admission to the hospital Director and the Department investigator that he slapped the patient, and that he understood his conduct was inappropriate, the notion that the patient was unaware of the touching and that this somehow suggests that no issue exists, is a matter of great concern. The wrong was committed whether the patient was aware of the touching or not. Respondent failed to internalize his own misconduct. He fails to demonstrate an understanding that professional standards of conduct relate to the nurse's own internal decisions which manifest in some form of volitional conduct or misconduct. Respondent testified that he flicked the patient and that he was doing his job and that it was not a reportable event. Respondent is attempting to mislead this tribunal or he is unable to comprehend the seriousness of violating his professional ethic. While the consequences of misconduct is important, professional standards look to the decision making process of the Nurse to ascertain a willingness or an unwillingness to commit the wrong complained of.

11. Respondent testified that he was dumfounded why the ECT reported him. Yet respondent apologized to the ECT. Respondent testified that he was dumfounded the ECT exaggerated. He further testified that he was dumfounded why the ECT tried to damage respondent. Respondent's testimony is not credible. Respondent's conduct was inimical to the health, welfare, and safety of his patient. Although the Administrative Law Judge found that the "facts and circumstances show that the preponderance of the evidence supports the conclusion that respondent intentionally and with force slapped his patient in violation of his patient's rights and in violation of respondent's professional standards of conduct", the Board finds that clear and convincing evidence supports that finding and conclusion. The Board cites the following evidence: (1) Mr. Mercado testified that Respondent had intentionally and with force slapped the patient. (TR-15, 40); (2) Respondent admitted to Ms. Colombo, the director of Emergency Services, that he had slapped the patient because Respondent had found the remarks to Mr. Mercado offensive (TR-44,45.); (3) Respondent admitted to Investigator Carceres that he had slapped the patient for good reason. (TR-65.) Respondent's act of slapping his patient constituted professional incompetence. While carrying out his nursing functions his slapping his patient was unprofessional conduct.

12. Respondent has been a Registered Nurse since 1991. He served four years in the ER as an ECT. After becoming a Registered Nurse he served in the ER for 12 years. No prior incidents of inappropriate touching of patients were reported as being part of respondent's work history.

13. The Deputy Attorney General filed a certification of the costs of investigation and prosecution of this matter pursuant to Business and Professions Code section 125.3. The costs incurred were as follows:

- a. The Deputy Attorney General logged .25 hours at the rate of \$112.00 per hour for a cost of \$28.00 in the fiscal year 2003/2004. The Deputy Attorney General logged 4.50 hours at the rate of \$112.00 per hour for a cost of \$504.00 in the fiscal year 2002/2003, for a total claim of \$532.00.

- b. The Division of Investigation logged 24.00 hours in the fiscal year 2002/2003, at the hourly rate of \$120.00, for a total claim of \$2,880.00.
- c. The Legal Assistance Team spent 1.25 hours at the hourly rate of \$53.00, in the fiscal year of 2002/2003, for a total claim of \$66.25.
- e. The total costs shown to be reasonably claimed and therefore recoverable are \$3,478.25.

LEGAL CONCLUSIONS

- 1. Business and Professions Code section 2750 provides:

Every certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided in this article. As used in this article, "license" includes certificate, registration, or any other authorization to engage in practice regulated by this chapter. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

- 2. The Board filed an accusation against respondent pursuant to Business and Professions Code section 2750. Respondent filed a timely notice of defense in response to the accusation. Respondent was provided this due process hearing pursuant to Government Code, commencing with section 11500, as a result of his filing a notice of defense.

- 3. Business and Professions Code section 2761 subsections (a) (1) provides:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions. ...

...

4. Respondent engaged in unprofessional conduct resulting in harm to his patient. Harm occurred whether or not the patient was aware of being slapped. Harm occurred whether or not the respondent believed the touching incident was a non-issue event. Harm occurred whether or not respondent believed the incident to be reportable, and whether or not he believed he violated his professional standards of conduct. Respondent did violate the professional standards of conduct of a registered nurse. Respondent was incompetent and grossly negligent in carrying out his nursing functions. Slapping a person that had been placed in the care of respondent involved conduct that was substantially related to the qualifications, functions, and duties of a registered nurse.

5. The Board considers respondent's act of hitting a patient --who was restrained at three points of a four-point restraint-- to be a serious violation. His denial of culpability in the face of very strong evidence demonstrates his lack of sufficient rehabilitation.

6. As set forth in Findings 4, 5, 6, 7, 8, 9, 10 and 11, respondent committed an act constituting grounds for disciplining his license under sections 2761(a)(1) and (f) of the Business and Professions Code. The act committed by respondent was substantially related to the qualifications, functions and duties of a registered nurse.

7. Business and Professions Code section 125.3 provides in part as follows:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, the board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

...

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law

judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

8. It is the duty of the Board to initiate an inquiry into unprofessional conduct of registered nurses. Additionally, it is the duty of the Board to investigate complaints about misconduct filed with the Board committed by registered nurse licensees. Costs incurred in this case were both reasonable and necessary because of the unprofessional conduct of respondent. The Board is entitled to reimbursement for costs in the amount of \$3,478.25.

ORDER

IT IS HEREBY ORDERED that Registered Nurse License Number 469962 issued to Respondent is revoked. However, the revocation is stayed and respondent is placed on probation for three (3) years on the following conditions.

SEVERABILITY CLAUSE -

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) **OBEY ALL LAWS** - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) **COMPLY WITH THE BOARD'S PROBATION PROGRAM** - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

(3) **REPORT IN PERSON** - Respondent, during the period of probation, shall appear in person at interviews and meetings as directed by the Board or its designated representatives.

(4) **RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE** - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing license during the term of probation.

(5) **SUBMIT WRITTEN REPORTS** - Respondent, during the period of probation, shall submit or cause to be submitted such written reports and declarations and verification of actions under penalty of perjury, as required by the Board. These reports and declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

(6) **FUNCTION AS A REGISTERED NURSE** - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his or her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he or she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing supervision or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
- (c) Minimum - The individual providing supervision or collaboration has person-to-person communication with respondent at least twice during each shift worked.
- (d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision or collaboration as required by the Board during each work day. The individual providing supervision or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(10) COMPLETE A NURSING COURSE(S) - Respondent, at his or her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his or her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

(11) COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$3,478.2. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original

conditions of probation will apply.

(12) VIOLATION OF PROBATION - If a respondent violates the conditions of his probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(13) LICENSE SURRENDER - During respondent's term of probation, if he ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for a license surrendered for a mental or physical illness.

(14) THERAPY OR COUNSELING PROGRAM - Respondent, at his expense, shall participate in an on-going counseling program until such time as the Board releases him from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

(15) COMPLETE AN ANGER MANAGEMENT COURSE - Respondent, at his own expense, shall enroll and successfully complete an anger management course within six months from the effective date of this decision.

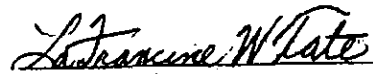
Respondent shall obtain prior approval from the Board before enrolling in the course. After making a copy for his own records, Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course. The Board shall return the original documents to respondent after photocopying them for its records.

(16) **PETITION FOR EARLY TERMINATION OF PROBATION** - Respondent may file a petition requesting early termination of his probation after one year from the effective date of this decision.

ORDER

IT IS SO ORDERED.

DATED: April 19, 2006

A handwritten signature in cursive script, reading "LaFrancine W. Tate".

LaFrancine Tate
President
California Board of Registered Nursing

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Attorneys for Complainant

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2003-243

PHILLIP JACK NYMAN, RN
6 Mistletoe Street
Rancho Santa Margarita, CA 92688

ACCUSATION

Registered Nurse License No. 469962

Respondent.

Complainant alleges:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

2. On or about August 31, 1991, the Board of Registered Nursing issued Registered Nurse License Number 469962 to Phillip Jack Nyman, RN (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2005, unless renewed.

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1 JURISDICTION

2 3. This Accusation is brought before the Board of Registered Nursing
3 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 STATUTORY PROVISIONS

6 4. Section 2750 of the Business and Professions Code (Code) provides, in
7 pertinent part, that the Board may discipline any licensee, including a licensee holding a
8 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
9 2750) of the Nursing Practice Act.

10 5. Section 2761 of the Code states in pertinent part:

11 "The board may take disciplinary action against a certified or licensed nurse or
12 deny an application for a certificate or license for any of the following:

13 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

14 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed
15 nursing functions.

16 "..."

17 6. Section 125.3 of the Code provides, in pertinent part, that the Board may
18 request the administrative law judge to direct a licensee found to have committed a violation or
19 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
20 and enforcement of the case.

21 CHARGES AND ALLEGATIONS

22 Cause for Discipline

23 (Unprofessional Conduct: Gross Negligence)


24 7. Respondent is subject to disciplinary action under section 2761(a)(1) for
25 gross negligence in that on or about March 23, 2002, while on duty as a registered nurse in the
26 Emergency Department of Hoag Memorial Hospital in Newport Beach, California, respondent
27 slapped in the face an intoxicated patient in 4-point restraints.
28

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 469962, issued to Phillip Jack Nyman, RN;
2. Ordering Phillip Jack Nyman, RN to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 5/4/03


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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CLERK OF SUPERIOR COURT
COUNTY OF LOS ANGELES